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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Group Art Unit: 3764

Roman S. Ferber et al.

Examiner: Fenn C. Mathew

Serial No.: 09/833,401

Filed: April 11, 2001

For: AIR BUBBLE MASSAGE BATH MAT SYSTEM

Attorney Docket No.: HOME 0459 PUS

REPLY BRIEF TO EXAMINER'S ANSWER
UNDER 37 C.F.R. § 1.193(b)

Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed July 20, 2004, the Appellants present the remarks below.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, U.S. Patent & Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on:

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Remarks

The Appellants have filed these remarks to address the Examiner's Answer mailed August 25, 2004. In particular, these remarks are addressed to the Examiner's statements in the response to arguments found in paragraph 11 with respect to claims 14-25. These remarks, however, are not intended in any way to concede the Examiner's position in any other rejection. Rather, they are merely submitted to clarify the noted line of arguments.

The arguments made with respect to claims 14-25 include an intended purpose line of arguments meant to demonstrate that it is against the intended purpose of the Sandrin patent to include the foam blocks of the Cook patent, and therefore, impermissible for the Examiner to base his rejection on such a modification. The Examiner's position proposes to plug conduits in the Sandrin patent with foam blocks in order to support a bather resting on the Sandrin bath mat. The Examiner notes doing so is not against the intended purpose of the Sandrin patent because other conduits in the Sandrin bath can still cycle air therethrough to provide the desired bubbling action if the foam blocks are inserted in the other conduits. This, however, is not the intended purpose that the Appellants assert is changed by inserting the foam blocks of the Cook patent. Rather, the Appellants argue that the intended purpose lies with the ability to inflate the Sandrin bath mat so that the inflated air may be used to fill the conduits to support the bather while at the same time being deflatable so that the Sandrin bath mat may be easily rolled up for storage and transportation. Because the Examiner's position would prevent one from rolling up the Sandrin bath mat for ease of transport, the proposed modification is against the intended purpose of the Sandrin patent, and therefore, it is improper for the Examiner to rely on such a modification in rejecting the claims.

The arguments made with respect to claims 14-25 further include a teaching away line of argument wherein the Appellants submit that the Sandrin patent teaches away from including the foam blocks of the Cook patent, and therefore, it is impermissible for the Examiner to base his rejection on such a modification. This line of argument noted that in the background section of the Sandrin patent the Sandrin patent expel the value of preventing

localized pressure points on a bather resting on top of the bath mat. The background section further noted that the prior art had at least in one case provided such localized sources of pressure with 'rigid' materials. The Sandrin patent identified a need to overcome this problem and proposed to solve it by inflating the Sandrin bath mat with air or fluid in order to eliminate such localized pressure sources. The Appellants submit that including the foam blocks of the Cook patent would provide localized pressure points as the foam blocks are 'rigid' in the sense that such a material retains its general structure under pressure, and thereby provides localized pressure, whereas air and fluid do not. Because the proposed modification would provide localized pressure, the proposed modification is against the express teachings of the Sandrin patent, and therefore, it is improper for the Examiner to rely on such a modification in rejecting the claims.

Respectfully submitted,

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By 

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Date: 10-22-04

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